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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re Nathaniel F. et al., Persons  
Coming Under the Juvenile Court  
Law.

SOLANO COUNTY HEALTH AND  
SOCIAL SERVICES  
DEPARTMENT,

Plaintiff and Respondent,

v.

Jason F.,

Defendant and Appellant.

A159630

(Solano County Super. Ct.  
Nos. J44687 & J44688)

Jason F. (Father) appeals after the juvenile court declared his children, Nathaniel F. (Nathaniel) and Lillian F. (Lillian), dependents of the court and placed them in out-of-home placement with family reunification services. Father contends the jurisdiction findings were not supported by substantial evidence that the children were at substantial risk of serious physical harm at the time of the hearing. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Petition**

On August 30, 2019, the Solano County Health and Social Services Department (Department) filed a petition under Welfare and Institutions Code section 300, subdivision (b)(1),<sup>1</sup> on behalf of 13-year-old Nathaniel and 12-year-old Lillian. The petition alleged that the children resided with Father and came within the provisions of section 300, subdivision (b)(1), because there was a substantial risk they would suffer serious physical harm or illness as a result of Father's failure or inability to supervise or protect them and provide regular care for them due to substance abuse.

Count b-1 alleged that Lillian had "disclosed to a Vacaville Police Detective that she was touched 'inappropriately' by an adult friend of her father five years ago and again recently. An MDI [multidisciplinary interview] was scheduled for August 19, 2019, and the father . . . failed to bring the minor to the appointment. Additionally, it is reported that Lillian engages in self-harming behaviors. [Father] has failed to make the children . . . available to social workers to assess their safety in his home. The father's actions create a substantial risk that the minors . . . will suffer serious physical harm and/or neglect."

Count b-2 alleged that Father was "abusing substances, including but not limited to, crack cocaine. The Department has made multiple attempts to assess the safety of the children, . . . including having a search warrant and ex-parte order to have [Father] produce the children for interview and assessment, which was signed by a Judge. [Father] has not contacted the Department and has failed to make the children available for interview.

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

Such actions on the part of the father . . . create a substantial risk that the minors . . . will suffer serious physical harm and/or neglect.”

### **B. Referral, Investigation and Detention**

The Department received a referral in July 2019 regarding concerns about Father’s use of crack cocaine in the home, and Lillian’s disclosure that she had been “ ‘touched’ inappropriately by one of her father’s adult friends for the last five years.”

According to the detention report, the children had not been enrolled in school since June 2018, and the family was in the process of being evicted. The Department made several attempts to perform a home visit and make contact with Father by leaving voicemails and text messages to telephone numbers listed for Father and the children’s stepmother, P.F. (Stepmother), but Father did not respond. A social worker attempted contact at the home of Stepmother’s mother and at the confirmed address of Father, leaving a business card at these locations.

On August 15, 2019, a Vacaville police officer identified in the record as Detective Gottlieb (or Gotlieb) spoke with Lillian, who disclosed that “ ‘something happened’ when she was 5 and again last year when her father got married,” and that the accused perpetrator was Joshua H. Gottlieb believed the children were not being bathed, and Lillian appeared dirty and “thin, but not emaciated.” An MDI was scheduled for August 19, 2019, but Father failed to bring Lillian to the appointment. Social workers and Vacaville police officers made further attempts to contact Father and serve him with a warrant to produce the children for an interview, to no avail.

At the September 3, 2019, detention hearing, Father appeared with the children and submitted them to temporary detention. The juvenile court ordered the children detained and placed in an emergency foster home.<sup>2</sup>

### **C. Jurisdiction Report**

On September 25, 2019, the Department filed a jurisdiction report recommending that the juvenile court order the continued detention of the children, sustain the allegations of the petition, and set a disposition hearing.

According to the report, Father had been the children's primary caregiver for most of their lives. Mother had a history of being unhoused and had not seen the children since December 2017. Mother "was informed that the home environment had 'gotten worse,' specifically 'the molestation,' lack of food in the home, and the possibility that [Stepmother] was engaged in prostitution."

During a September 20, 2019, interview, Lillian told a social worker that her home life was " 'fine' " and that she had no knowledge of Father and Stepmother using drugs or acting differently or concerning, except that Stepmother was often sick from Multiple Sclerosis (MS). Lillian said that Father had given her and Nathaniel the option to be homeschooled because other students at school were not nice to them. However, the " 'only' " schoolwork Lillian recalled was helping with Stepmother's artwork.

Nathaniel told the social worker that he liked Father and Stepmother and spending time at Stepmother's mother's home, which was " 'stuffed with food.' " He described the foods he would usually eat at Father's home, including apples, macaroni and cheese, and sandwiches. Asked if he felt like he did not have enough food, Nathaniel said " 'not usually' " and stated there

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<sup>2</sup> The children were eventually placed with paternal grandmother as their substitute care provider.

were one or two times when he felt hungry, but it was usually the day they would go to the store.

Nathaniel described a typical day of homeschooling with Stepmother as involving “ ‘either art, or writing, or she would talk to us about something.’ ” The lessons would occur for two to three hours for a few days, and then they would have “ ‘break days.’ ”

Asked if he knew of anyone who used drugs, Nathaniel said his grandfather used to smoke cigarettes and Stepmother sometimes took medicine. He said that Father and Stepmother told him not to do drugs.

The jurisdiction report indicated that Father tested negative for drugs on September 19, 2019, but that he had failed to appear for scheduled tests on four prior occasions. Father denied the allegations of crack cocaine use but admitted prior use of the drug MDMA or “Molly,” mushrooms, acid, and “ ‘a decent amount of cocaine.’ ” He stated he had been clean for a year and a half and had distanced himself from friends who used drugs. However, he admitted that in recent months, he had used Molly while the children were with their paternal grandfather, and had eaten marijuana chocolate to treat back pain. Stepmother smoked marijuana to help with pain from MS, but Father said the marijuana was stored out of the children’s reach.

Mother told the social worker she was contacted by Father’s former coworkers for money he owed them for cocaine. Mother further reported that a friend called Cajun had gone to Father’s home out of concern for the children because of Father’s and Stepmother’s “substance use” and because Cajun “wanted to drop off food, as the previous month they indicated they did not have enough food. When [Father] answered the door, ‘Cajun’ described [Father] as ‘spun out of his mind.’ ” Cajun asked to see the children, but

Father said they were “‘at grandma’s’” and closed the door as Stepmother yelled at him to close it.

Regarding the allegations of molestation, the jurisdiction report indicated that in April 2019, a friend of Mother’s informed her that Lillian had disclosed to Lillian’s friend that “she was molested and that they were hungry.” Asked about these allegations, Father said that Joshua H. was a friend of his who often babysat the children, and that Lillian had recently expressed discomfort from Joshua H.’s physical behaviors. On one occasion in 2017, Joshua H. was on the sofa with Lillian, who had her legs over his legs, and Joshua H. had his hand on her calf. Father explained to Joshua H. that Lillian was older now and that it was not appropriate to put hands on her in the same way that might have been appropriate when she was young. Joshua H. apologized and said he would stop. In 2017, when Joshua H. was babysitting the children, Lillian woke up after a nightmare and went to Joshua H., who comforted her by wrapping his arms around her body and rubbing her body, but not her genitals. Father indicated that Joshua H.’s manner was not dissimilar to how he would have comforted her, but he understood why Lillian later reported feeling uncomfortable.

According to Father, Joshua was “no longer in his life.” Father “had stopped talking to Josh, but had reached out to him when Lillian came forward with the accusations. [Father] called and left Facebook messages asking Josh to ‘meet up’ because he was ‘pissed,’ but they never met.” Asked why he did not initially make the children available for an interview with the police, Father said he and his family were at Stepmother’s mother’s home on the day Detective Gottlieb attempted to make contact. When Father returned to his residence, Gottlieb was there accusing Father of keeping Lillian away. Father stated he was willing to bring Lillian in for an

interview the following day, but Father ended up in the emergency room that day.

Regarding Lillian's self-harming behaviors, Father told the social worker that Lillian told him and Stepmother in December 2018 that she was cutting herself. The conversation involved " 'lots of talking, hugging, and comforting.' " They discussed the potential for Lillian to enter an inpatient treatment program, but ultimately determined it was unnecessary. After the conversation, Father checked up with Lillian once a month. She appeared happier, promised she was no longer self-harming, and volunteered to show parts of her body to Stepmother to prove it.

Father explained that the family decided to homeschool the children because Nathaniel had been bullied at school, Lillian had difficulty concentrating, and Stepmother did not want to register the children in school for " 'political reasons.' " Father believed Stepmother was a good homeschool teacher.

Father explained there were multiple issues in the apartment that needed repair, but the landlord had not been responsive so Father withheld rent for four months and was being threatened with eviction. Father reported he had paid rent for the previous eight or nine years he had lived there. He denied there was insufficient food in the house but disclosed he sometimes received help from paternal grandfather to pay for groceries or obtained food from Stepmother's mother's house.

Paternal grandmother was concerned about the children's lack of education and their having "to cook their own meals, which was a change as [Father] historically enjoyed cooking." She also reported the children were awake during the night and sleeping during the day. Paternal grandmother had not personally seen Father use drugs.

## **D. Disposition Report**

On October 23, 2019, the Department filed its disposition report recommending that the juvenile court order the continued detention of the children and that Father and Mother be offered family reunification services.

According to the Department, on several dates in October 2019, the Department attempted to contact Father to obtain further information for the jurisdiction and disposition hearing. Father failed to appear for a scheduled appointment on October 22, 2019.

The Department was in receipt of the Vacaville Police Department report regarding the allegations of molestation. According to the disposition report, on August 8, 2019, a family friend informed Detective Gottlieb of a text message she received from Lillian, who disclosed that she had been touched by Father's friend, "Josh."<sup>3</sup> Gottlieb noted that Father's hygiene was " 'very unkempt' " and there was a " 'strong odor' " coming from the apartment. Lillian was also " 'very unkempt,' " and her hair was " 'greasy' " like Father's. Though initially hesitant to speak with Gottlieb, Lillian

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<sup>3</sup> Detective Gottlieb obtained the text message in question, in which Lillian stated that Joshua H. would " 'rub my back to calm me down, but he would go other places. . . . He would touch my legs, my arms, EVERYWHERE. Even my butt. He didn't touch me in my private place though. But the way he did it . . . it scared me and he would never do it when others were around. I still remember when my parents got married we stayed in a hotel. Me and Josh shared a room. . . . I HATED IT!!! I asked daddy if I could stay with my mom instead, but I hadn't told him what Josh, what he had been doing since I was little. So he said no and said I had to stay with him. I don't blame him because I don't know but . . . I HATED it there. I told daddy a week ago about it. And he said sorry and wished I told him sooner and he even cried with me but I was so scared to tell him. . . . I didn't know anything was wrong when we were little and he did it because I didn't know. But as we got older it was weird. I remember I told him to stop once. . . . HE DIDN'T. And we stayed in the hotel for about 3 or 4 days too.' "



eventually disclosed that Joshua H. had touched her inappropriately when she was five or six years old, and that when Father got married to Stepmother the previous year, Lillian was forced to share a hotel room with Joshua H., and he again touched her inappropriately.

After the children were detained by the juvenile court, Lillian participated in a forensic interview. She did not make disclosures of inappropriate touching at that time. The children appeared to be “ ‘still very unkempt,’ ” and Lillian could not remember the last time she had showered. The children had no concerns about returning home to Father’s care. Nathaniel said he would be happy to return, and Lillian “denied anything she would want addressed prior to her returning to their care.” The children were enrolled in school, and the school had no concerns about them. Father attended most of his weekly scheduled visits with the children and showed “a strong positive relationship with them.”

The Department attempted to contact Father to inform him that he was scheduled to complete a hair strand drug test. A social worker eventually made contact with Father at the courthouse in September 2019. At that time, Father had temporarily dyed hair and said it might impact the hair strand test. The social worker scheduled another hair strand test for Father in October 2019, but he failed to appear or reschedule the test.

### **E. Jurisdiction and Disposition Hearing**

On February 7, 2020, the juvenile court held a combined jurisdiction and disposition hearing.

Father testified that he had been employed “[o]ff and on” between 2012 and 2019 at a gas station and at a medical marijuana chocolate company. He stated that between his income and the financial support he received from family, he has always been able to provide the children with shelter, food,

clothing, and medical care. Father's plan for housing once they leave the apartment is to live in paternal grandfather's house.

Father denied he ever deliberately tried to keep his children from the Department or Detective Gottlieb. He claimed he did not receive any of the messages from the Department or the Vacaville police other than one business card, and he was not at home when they attempted to make contact with him because he and the children were providing hospice care for Stepmother's grandmother at the home of Stepmother's mother. Father knew a social worker was trying to contact him in early August 2019 and conceded he made no attempt to contact the social worker because he "didn't think it was important," despite not knowing what it was about. Father testified that he heard one voicemail from Gottlieb to Stepmother, but claimed Gottlieb did not provide a date for the interview. Although Father agreed to make Lillian available for the MDI the day after he was contacted by Gottlieb at his home, Father was unable to make the appointment because he was admitted into the hospital for kidney stones. He submitted the hospital discharge papers as evidence.

Regarding his missed drug tests, Father testified that there was confusion about testing times, and that his phone did not work for a period of time. Father said he missed a drug test in November 2019 because he was with his wife in the emergency room. Father admitted he never called the social worker to report his inability to make a scheduled test.

Father testified that Lillian first informed him of the molestation at the end of July 2019. Prior to this time, Lillian had never told Father she was uncomfortable with Joshua H., and she "had asked for [Joshua H.] to come over and play games and stuff." Asked about his decision to allow Joshua H. to share a hotel room with Lillian in March 2018, Father testified he did not

think it was inappropriate because Lillian “has been around [Joshua H.] all her life. He was like an uncle. He has always been a babysitter.” After Lillian’s disclosure, Father “sat down with her, was upset, cried with her.” Father testified that Joshua H. was not an active part of his life and was no longer allowed around Lillian. Asked why he did not call the police, Father testified, “At first I was in shock and then I was talking with her about it, getting the whole feel for the situation right in my head. It wasn’t anything sexual. It was just her feeling uncomfortable with something. So I didn’t feel there was a need for police.”

Father testified that the family decided to try homeschooling because the children were “extremely unhappy” in school and were often teased. At home, the children learned history, art, math, reading, writing and sex education, and they had supplies and a quiet place to work.

Social worker Magie Chiang testified that Father completed two drug tests but missed eight others. She believed Father had a substance abuse problem due to his evasion of the Department and the drug tests, his attempt to skew drug test results by dyeing his hair, the changes in his social relationships that isolated himself and the children from the rest of his family, and the children’s ungroomed appearance. Chiang also believed that Father’s irregular sleeping habits indicated drug use.

Regarding the allegations of molestation, Chiang testified that the Department was concerned about Lillian’s safety because Father and Stepmother “acknowledged there had been previous concerns between Josh and Lillian,” specifically the incident in 2017 when Joshua H. was inappropriately touching Lillian’s legs. Chiang also expressed concern that after Lillian disclosed the molestation to her friend, Father and Stepmother attempted to isolate Lillian from that friend by advising her not to talk to the

friend anymore, taking away Lillian's phone, and even threatening the designated substitute care provider (paternal grandmother) that Lillian should not be allowed to see that friend.

Chiang believed the children had received minimal to no schooling at home. After Nathaniel reentered public school, he was held back a grade. Lillian was doing well academically but struggling in math. According to Chiang, friends of Father's family dropped food off at the house out of concern that the children were "not being fed."

The juvenile court adopted the Department's recommendations and found the allegations of the petition true by a preponderance of the evidence. The court expressed its concerns about the children's lack of schooling, the impending eviction, the "admissions and concerns from other people that there isn't enough food into the house," Father's drug use and failure to submit to drug testing, the allegations of "inappropriate sexual contact" and Father's failure to make Lillian available for the MDI, and that "[t]he parents always have an excuse for never contacting the police or never contacting the department when there is an awful lot of things that don't look right here."

The juvenile court further found "on disposition there is clear and convincing evidence the children come under [section 300]," and that reasonable efforts were made to prevent removal. The court ordered reunification services for both parents and ordered Father to submit to drug testing that day.

Father appealed.

## **DISCUSSION**

In dependency proceedings, the petitioner must prove by a preponderance of the evidence that a child comes under the juvenile court's jurisdiction. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185; see § 355,

subd. (a).) On appeal from an order of jurisdiction, we review the record for substantial evidence, resolving all conflicts in favor of the juvenile court's findings. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161–1162 (*T.W.*)). We do not reweigh the evidence or consider whether the court could have drawn a different conclusion. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*In re Veronica G., supra*, at p. 185.) It may consist of reasonable inferences based on the evidence, but not inferences that are the result of mere speculation or conjecture. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763 (*Drake M.*)).

“‘[T]he circumstances under which the juvenile court is authorized to take jurisdiction of a child are narrowly defined.’” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 565.) At issue here is section 300, subdivision (b)(1), which authorizes jurisdiction where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

“[C]ourts evaluate the risk that is present at the time of the adjudication hearing.” (*In re Roger S.* (2018) 31 Cal.App.5th 572, 582 (*Roger S.*)). While past conduct may have some probative value in evaluating current conditions, “the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’” (*In re*

*Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*), abrogated in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 627–629 (*R.T.*); *In re J.N.* (2010) 181 Cal.App.4th 1010, 1023; *In re Janet T.* (2001) 93 Cal.App.4th 377, 388 (*Janet T.*); but see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435 [evidence of prior serious harm or abuse alone supports jurisdiction under section 300, subdivision (b)]; *In re David H.* (2008) 165 Cal.App.4th 1626, 1641 [same].)<sup>4</sup>

Father contends there was no substantial evidence supporting jurisdiction under count b-1. Specifically, he argues the evidence showed that he completely cut Joshua H. out of his life after Lillian disclosed the molestation, and that Lillian eventually stopped engaging in self-harming behaviors, and therefore, there was insufficient evidence of a substantial risk of serious physical harm at the time of the hearing.<sup>5</sup> Father further contends there was no substantial evidence to support jurisdiction under count b-2 because there was no evidence of any link between the possibility of Father's

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<sup>4</sup> The Department contends that *Rocco M.* was abrogated by the Supreme Court in *R.T.*, but *R.T.* only disapproved of certain language in *Rocco M.* and other cases that a parent's "neglectful" conduct was an essential element under section 300, subdivision (b)(1). As the high court clarified, section 300 does not require that a parent commit neglect or deserve blame for being unable to supervise or protect the child, only that an actual inability to provide for necessary supervision or protection exists. (*R.T.*, *supra*, 3 Cal.5th at pp. 624, 629.)

<sup>5</sup> We tend to agree with Father that substantial evidence does not support a causal nexus between any failure or inability on Father's part to protect or supervise Lillian and a substantial risk of her further *self-harm*. (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724–725 [causation is essential element of section 300].) The Department has had opportunities since the detention and emergency foster placement to assess Lillian but points to no evidence that her self-harm was ongoing at the time of the jurisdiction hearing. Our affirmance of jurisdiction rests on other grounds, as discussed throughout this opinion.

drug use and any physical harm or substantial risk of physical harm to the children.

We conclude jurisdiction over both children was appropriate based on Father's substance abuse. (§ 300, subd. (b)(1).) To sustain a jurisdiction finding on this ground, there must be evidence of not just substance use, but abuse. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 764.) Although Father tested negative twice, he admitted to heavy past drug abuse, more recent use of MDMA and marijuana, and eight missed drug tests during the dependency proceedings. A missed drug test without explanation can be presumptive evidence of a positive test. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1303–1304.) Despite some plausible explanations for some of Father's absences, the juvenile court reasonably found many of his explanations insufficient. The court may have also credited Chiang's opinion that Father dyed his hair to skew the hair strand test, and that his abnormal sleeping patterns were consistent with substance abuse. The record, viewed in a light most favorable to the juvenile court's order, supported a finding of Father's substance abuse.

As Father points out, “substance abuse, *without more*, is an insufficient ground to assert jurisdiction in dependency proceedings under section 300.” (*In re L.W.* (2019) 32 Cal.App.5th 840, 849, *italics added*.) There must also be substantial evidence of “a specific, defined risk of harm” to the children resulting from the substance abuse. (*In re David M.* (2005) 134 Cal.App.4th 822, 830 (*David M.*).)<sup>6</sup> On this score, Father contends the Department did

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<sup>6</sup> We note and reject the Department's suggestion that the children were of such “tender years” that Father's substance abuse alone supported a presumption of a substantial risk of serious physical harm to them. The Department cites no authority applying the “tender years” presumption to children aged 12 or 13. (See *In re Christopher R.* (2014) 225 Cal.App.4th

not argue or present evidence that he used drugs in front of the children or that the children had access to any drugs, and the record otherwise showed that the children and paternal grandmother never saw Father use drugs. Citing *Janet T.*, *supra*, 93 Cal.App.4th at pages 388–389 and *Roger S.*, *supra*, 31 Cal.App.5th at pages 582–583, Father further contends that lack of adequate homeschooling or poor hygiene unconnected to a medical or dental issue are insufficient to demonstrate a substantial risk of serious physical harm from his presumed substance abuse.

We reject Father’s arguments, as the juvenile court could reasonably draw different conclusions from the evidence. Father’s repeated evasion of the Department’s social workers and multiple drug tests was not without consequence and could be used as evidence against him. (*In re E.E.* (2020) 49 Cal.App.5th 195, 209 (*E.E.*)). In *E.E.*, the appellate court found dependency jurisdiction supported by substantial evidence where a mother’s evasiveness and resistance to investigation and monitoring—including refusing to speak to social workers, trying to hide her children by placing them with a friend, and avoiding or missing several drug tests—demonstrated that she was dishonest about the extent of her drug use and had not seriously begun to address her issues. (*Id.* at p. 213.) Just as *E.E.* concluded that the mother’s case did not fall under the “substance abuse ‘without more’ category” (*ibid.*), the same conclusion holds here based on Father’s record of evasion.

Furthermore, in many of the “substance abuse ‘without more’ ” cases, the courts noted there was no evidence the parents’ substance abuse impacted their ability to provide adequate food, shelter and care for the children. (See *David M.*, *supra*, 134 Cal.App.4th at p. 830 [child was healthy

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1210, 1219 [discussing tender years presumption for children “six years old or younger” at time of jurisdiction hearing].)



and well cared for in “clean, tidy home”]; *Drake M.*, *supra*, 211 Cal.App.4th at pp. 768–769 [child was well cared for in home with “plenty of food”]; but see *Roger S.*, *supra*, 31 Cal.App.5th at p. 583 [body odor and dirty clothes unconnected to medical or dental condition did not demonstrate substantial risk of serious physical harm or illness despite evidence of mother’s drug use].) Here, in contrast, there was evidence that the children were very unkempt and that Father’s home had a “‘strong odor’” suggestive of unclean and unsanitary conditions. More importantly, Lillian appeared to be thin, and the Department’s reports contained statements that there was inadequate food in the house. One of these statements, purportedly made by Lillian to the friend she had confided in about the molestation, was that “they were hungry.” It does not appear that Father objected to these statements in the Department’s reports, and so the juvenile court was free to credit this evidence over contrary statements by Father and Nathaniel claiming adequate food in the home. (See § 355, subds. (b), (c).) Although Father points out that Chiang admitted the Department had not checked the inside of Father’s home to evaluate its condition, this was presumably due to Father’s lack of cooperation. Indeed, Chiang testified that “[n]o one was allowed in the home.”

For these reasons, we conclude substantial evidence supported the juvenile court’s jurisdiction finding that Father was abusing substances and that the children were consequently at substantial risk of serious physical harm. (§ 300, subd. (b)(1).) We also find substantial evidence supporting jurisdiction under count b-1. As set forth above, we view the record in favor of the juvenile court’s order without regard to evidence that supports a contrary finding, such as Father’s self-serving testimony at the hearing. (*T.W.*, *supra*, 214 Cal.App.4th at p. 1161.) It also bears emphasizing that

courts need not wait until a child is seriously abused to assume jurisdiction and take steps to protect the child. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) Viewed most favorably to the juvenile court's order, the record here demonstrates that Lillian has been repeatedly subjected to inappropriate physical contact by Father's friend, and that Father's evasiveness and lack of cooperation thwarted the Department's efforts to ensure that Father was indeed protecting Lillian from Joshua H. The record is replete with instances in which the Department's efforts to make contact with Father were ignored. While Father proffered various reasons for his lack of contact in certain instances, the juvenile court found reasonable justification lacking overall, and we defer to that finding. Father's attempt to downplay his record of evasiveness is unavailing. As discussed, a parent's failure to cooperate in a child welfare investigation is not without consequence, and one of those consequences is that the failure can be used as evidence in a hearing on a section 300 petition. (*E.E.*, *supra*, 49 Cal.App.5th at p. 209.)

Additionally, the evidence, viewed favorably in support of the juvenile court's order, shows that Father exercised poor judgment in: (1) allowing Joshua H. to share a hotel room with Lillian unsupervised for several days in 2018 after having witnessed inappropriate contact in 2017; (2) failing to contact law enforcement after Lillian's disclosure in 2019; (3) avoiding Detective Gottlieb's efforts to contact him after the matter was referred to the authorities; and (4) attempting to isolate Lillian from further contact with the friend to whom she had initially confided in about the molestation. The juvenile court could reasonably conclude Father's conduct did not reflect a proper effort to keep Lillian safe from further harm. Taken together, the evidence was sufficient to support the Department's and the court's concerns

that Father had not taken adequate safeguards to prevent Lillian from further risk of serious harm from Joshua H.

In sum, we conclude there was substantial evidence that (1) Father did not adequately safeguard Lillian from further risk of serious harm from Joshua H. and (2) Father's substance abuse, combined with his evasiveness and dishonesty about it, and his inability to provide adequate food in the home, placed the children at substantial risk of serious physical harm. (§ 300, subd. (b)(1).) Accordingly, we affirm the jurisdiction order.

Father also contends the disposition order must be reversed. A juvenile court must not remove a child from parental custody unless it finds clear and convincing evidence of any of the circumstances listed in the statute, including a substantial danger to the physical health and safety of the minor if the minor were returned home, and no reasonable means by which the minor's physical health can be protected without removing the minor from the parent's custody. (§ 361, subd. (c) & (c)(1); see *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995, 1011 [appellate review of sufficiency of evidence in support of finding requiring clear and convincing proof must account for higher standard].) Here, the juvenile court found that the children's removal was supported by clear and convincing evidence. Father, however, advances no argument or authority showing reversible error in the juvenile court's disposition order, and the sum total of his challenge to the disposition order is as follows: "The disposition order derived from the erroneous jurisdictional findings, and thus both the jurisdictional findings and the disposition order as to Father should be vacated." Our conclusions above lead us to affirm the disposition order as well.

#### **DISPOSITION**

The jurisdiction and disposition findings and orders are affirmed.

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Fujisaki, Acting P.J.

WE CONCUR:

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Petrou, J.

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Jackson, J.

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